

## REMARKS

### Claim Amendments

Claim 23 is amended herein to incorporate the limitations of dependent Claim 26. Claims 25 and 26 are canceled herein. Claims 27, 28 and 42 have been amended to correct the claim from which they depend. Support for these amendments can be found throughout the specification and in the claims as originally filed. No new matter has been added.

### Rejection of Claims 23-32 and 36-45 Under 35 U.S.C. §112, First Paragraph

Claims 23-32 and 36-45 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement rejection. Specifically, the Office Action states that the phrase “removal or prevention of wrinkles” would imply a cure.

Claim 23 has been amended to recite that the composition is used to decrease or alleviate the appearance of wrinkles. Claims 24-32 and 36-45 are dependant on Claim 23 and incorporate the limitations of the claim from which they depend. Therefore, Claims 23-32 and 36-45 satisfy 35 U.S.C. §112, first paragraph. Reconsideration and withdrawal of the rejection are respectfully requested.

### Rejection of Claims 23-45 Under 35 U.S.C. §103(a)

Claims 23-45 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Siddiqui (US Patent No. 6,146,664). According to the Examiner, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to provide UV protection or treat wrinkles or to stimulate collagen production in a mammal by topically applying a ascorbic acid composition of Siddiqui.

Applicant has amended Claim 23 herein to recite that the composition to be topically applied comprises at least 30% L-ascorbic acid, by weight, having a mean particle size of no greater than approximately 5  $\mu\text{m}$ , a non-aqueous carrier and an exfoliant. The biological actives are in a particle size that approximates the molecular size of the biological active. This is advantageous because the size of the biological active is a governing factor for percutaneous absorption. As particle size decreases the surface area of a material grows rapidly. The rate of solubilization of a material is a function of exposed surface area and so the smaller the particles and the greater the surface area the more easily and rapidly it is absorbed.

Siddiqui fails to teach or suggest an ascorbic acid composition of the instantly claimed particle size and the addition of an exfoliant to the described ascorbic acid composition. As such, the claimed invention would not have been obvious to one skilled in the art at the time the invention was made. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection of Claims 23-45 Under 35 U.S.C. §103(a)

Claims 23-45 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Siddiqui (US Patent No. 6,146,664) in view of Ozlen (US Patent No. 5,441,740). According to the Examiner, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to include enzymatic exfoliants, such as the papain of Ozlen, within the ascorbic acid composition of Siddiqui.

Applicant has amended Claim 23 herein to recite that the composition to be topically applied comprises at least 30% L-ascorbic acid, by weight, having a mean particle size of no greater than approximately 5  $\mu\text{m}$ , a non-aqueous carrier and an exfoliant. As discussed above, an ascorbic acid composition of a mean particle size of no greater than approximately 5  $\mu\text{m}$  provides beneficial properties to the composition that are neither taught nor suggested by Siddiqui or Ozlen. As such, the claimed invention would not have been obvious to one skilled in the art at the time the invention was made. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection of Claims 23-45 Under 35 U.S.C. §103(a)

Claims 23-45 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hernandez *et al.* (US Patent No. 5,843,411). According to the Examiner, Hernandez *et al.* teach an ascorbic acid formulation in a non-aqueous base or substantially anhydrous composition, thereby rendering obvious the claimed invention as a whole.

Applicant has amended Claim 23 herein to recite that the composition to be topically applied comprises at least 30% L-ascorbic acid, by weight, having a mean particle size of no greater than approximately 5  $\mu\text{m}$ , a non-aqueous carrier and an exfoliant. As discussed above, an ascorbic acid composition of a mean particle size of no greater than approximately 5  $\mu\text{m}$  and the addition of an exfoliant provide beneficial properties to the composition that are neither taught nor suggested by Hernandez.

The Office Action goes on to state that it is deemed obvious to one of ordinary skill, to determine through the use of routine or manipulative experimentation, to obtain the claimed particle sizes. However, the Office Action provides no support for this proposition, nor does the Office Action provide support for the beneficial properties, discussed above, that the claimed particle sizes provide. Without any teaching or suggestion of the beneficial properties of the claimed particle sizes, one skilled in the art would not have been motivated to obtain particles in Applicants size range. This is further evidenced by the lack of prior art disclosing particles in the claimed size range.


As Hernandez *et al.* do not explicitly or implicitly teach the claimed particle sizes and the addition of an exfoliant to composition, the claimed invention would not have been obvious to one skilled in the art at the time the invention was made. Reconsideration and withdrawal of the rejection are respectfully requested.

#### CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

Dated: *April 26 2005*

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